



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 19-03614  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Patricia M. Lynch-Epps, Esq., Department Counsel  
For Applicant: *Pro se*

11/10/2021

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is insufficient to demonstrate financial responsibility or that his financial problems are being resolved. The financial considerations security concerns are not mitigated. Moreover, he falsified his 2018 security clearance application (SCA), thus, personal conduct security concerns are not mitigated. Clearance is denied.

**Statement of the Case**

Applicant submitted an SCA on July 26, 2018, seeking a clearance required for his job with a federal contractor. After reviewing the information gathered during the background investigation, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued him a Statement of Reasons (SOR) on February 3, 2020, alleging security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant answered the SOR on May 18, 2020.

The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on March 26, 2021. The hearing was delayed due to COVID-19 health concerns. DOHA

issued a notice of hearing on September 9, 2021, setting a hearing for September 17, 2021. At the hearing, the Government offered 7 exhibits (GE 1 through 7). All exhibits were admitted into the record without any objections, except for GE 5, a summary of an interview (PSI) conducted by an investigator of the U.S. Office of Personnel Management (OPM) on December 20, 2018. Applicant objected to the admissibility of the PSI. Department Counsel did not present an authenticating witness and I sustained the objection. (See, Directive, Encl. 3, para. E3.1.20) The PSI was marked and made part of the record, but it was not considered evidence. GE 7 is the Government's Discovery Letter, dated March 5, 2021, which was marked and made part of the record, but it is not substantive evidence.

Applicant testified as reflected in a transcript (Tr.) received by DOHA on September 24, 2021. He offered no documentary evidence before or during his hearing. I gave him a period of 17 days post-hearing to supplement the record. He failed to avail himself of the opportunity.

### **Findings of Fact**

The SOR alleged 12 delinquent financial accounts, including eight accounts in collection (three for medical services), three charged-off accounts, and one repossessed car, totaling about \$41,811. It also alleged that Applicant falsified his July 2018 SCA when he answered "no" to the financial questions in Section 26 (Financial Record) and failed to disclose the delinquent accounts in SOR ¶¶ 1.a, 1.b, and 1.d through 1.i.

In his answers to the SOR, Applicant admitted all of the SOR allegations. All of the SOR financial allegations are also established by the four credit reports in evidence (GE 2-4, and 6). He also admitted to falsifying his 2018 SCA. His admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 33-year-old employee of a federal contractor. He graduated from high school in 2008, and attended a technology institute where he was certified as an automotive mechanic. He married in February 2012 and divorced in January 2015. He is currently engaged to be married. He has four children from different relationships, ages 2, 6, 8, and 10. (Tr. 28-30)

Applicant testified that he raised himself because his parents were never around to mentor, educate, or to teach him how to be financially responsible. (Tr. 22) He enlisted in the Navy trying to get away from the bad influences in the streets of his neighborhood and to become a productive member of society

Applicant enlisted in the Navy in 2008, and served on active duty until 2013, when he was honorably discharged as an E-3. He believes he held a secret-clearance while in the service that was continued after his discharge. Since his discharge, Applicant has worked for several federal contractors in different positions. According to

his 2018 SCA, Applicant was unemployed between August 2013 and January 2014, and between January 2015 and May 2015. Other than those two periods of unemployment, he has been fully employed since his discharge from the service. (Tr. 26-27) He has worked for his current employer and clearance sponsor at least twice, starting his most recent employment period as a shipyard painter in July 2021. (Tr. 26)

Section 26 (Financial Record) of Applicant's 2018 SCA asked whether in the past seven years he had: (1) bills or debts turned over to a collection agency; (2) any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; (3) defaulted on any type of loan; and (4) been over 120 days' delinquent on any debt; or was currently over 120 days' delinquent on any debt. Applicant disclosed that he was \$2,200 delinquent in his child support obligation to his daughter. He also disclosed that he cosigned a car loan that was then charged off for lack of payments (SOR ¶ 1.c). Aside from the two exceptions noted above, Applicant answered "No" to all the 2018 SCA financial questions and failed to disclose the delinquent financial accounts alleged in SOR ¶¶ 1.a, 1.b, and 1.d through 1.i.

Applicant initially stated that he did not remember all of his delinquent accounts when he completed the 2018 SCA. Later, he testified that he was aware that he was delinquent on most of the alleged SOR accounts. (Tr. 59-60) He stated that he disclosed some of the accounts he omitted to an OPM investigator during his December 2018 interview. (Tr. 59) Because he objected to the admissibility of his PSI, I did not consider his PSI and his hearing statement is uncorroborated. At hearing, Applicant testified that when he completed the 2018 SCA, he was paying child support for his oldest daughter, but later on her mother released him of the child support obligation. (Tr. 30)

Applicant's state is currently garnishing his wages to pay for his \$2,600 child support obligation in arrears. Applicant explained that the court made his child support payments retroactive. Thus, when the obligation started, he was already in arrears and has not been able to catch up. He also claimed his \$800 a month child support payments are too high. He explained that when his ex-wife filed for child support, she told the court he was making \$80,000 a year. Applicant has not been making that much money for some time. Currently, he is making about \$26 an hour. He testified that he could not afford to pay his child support obligation and his family's living expenses. He plans to request the court to lower his child support obligation. (Tr. 49-53)

Concerning SOR ¶ 1.a, Applicant testified that he took a car loan in 2010, to purchase a 2009 Charger. The account became delinquent in 2013. Applicant claimed that on an unknown date, he called the lender to explain he could not afford the car because his son was about to be born. He also stated he called the lender seeking a settlement for less than what he owed, and that more recently, he called the lender to ask how he could have the delinquent account removed from his credit report. He averred that his ex-wife took the car to have it repaired, but the repairs were so high that they could not afford to pay them and the car was repossessed. (Tr. 34-37)

SOR ¶ 1.b concerns another delinquent car loan. Applicant co-signed a car loan for his ex-wife in March 2016. He claimed she had promised to release him of the obligation after a period, but he never was released of his financial obligation. The loan became delinquent in June of 2016, and the car was repossessed. He was fully employed at the time that he made the car loan. Applicant claimed he told the lender of his agreement with his wife when the car note became delinquent, but the lender refused to take him off the note. When asked about his intentions with respect to the loan, Applicant stated that he was looking for ways to have it removed from his credit report. (Tr. 37-40)

SOR ¶ 1.c alleges another delinquent car loan. Applicant purchased the car in January 2013 and the account became delinquent five months later in June 2013. Applicant testified that he called the lender in 2013, 2014, 2015, and 2018 seeking a settlement for less than what he owed without success. He averred the lender refused the settlement offers. He never made any payments on this car note. (Tr. 42-43)

SOR ¶ 1.d alleges a delinquent personal loan Applicant took in 2011 while he was still in the service. The loan became delinquent in 2013. He claimed that the loan was paid by direct deposit from his bank account. He was given the opportunity to submit documentary evidence to corroborate his claims, but he failed to do so. (Tr. 43-45)

Concerning the allegations in SOR ¶¶ 1.e through 1.i, Applicant testified that these were his delinquent accounts. He claimed he tried to dispute some of them in 2019, but was unsuccessful. He presented no documentary evidence of: any disputes filed, valid legal issues to justify the disputes, any contacts with the creditors, any payments made, or of any payment arrangements established with any of the creditors. (Tr. 47-49)

Applicant owes the IRS about \$1,200 for tax year 2020. He claimed he contacted the IRS about two weeks before his hearing to establish a payment plan. As of his hearing date, he did not have a payment plan in place. (Tr. 52-53)

Applicant's current monthly net income is about \$4,400 a month. He believes he has about \$600 in a savings account and \$300 in a checking account after paying his living expenses. His rent is \$900. His monthly groceries expense is over \$1,200 because he has three children living with him. To keep his children active in sports he pays \$75 a month for the three children. He pays \$800 monthly in child support. He opened a credit card in January 2021. He called it his "self-card" because it is supposed to help him build his credit back. (Tr. 55-58)

Applicant understood that his finances would be of concern to the Government when he submitted his 2018 SCA. He did not present evidence to show that he has a working budget or that he has received any financial counseling. When asked how or why he acquired all of his delinquent debts, Applicant stated that he was just too young

and financially immature to deal with his finances. He was just living and not thinking of the consequences and repercussions that it could cause.

Applicant presented no documentary evidence of payments made on any of the accounts alleged in the SOR since the day he acquired the obligations to the day of the hearing. He failed to submit any documentary evidence of any contact with creditors, of any payment plans established, or of any payments made on any of the debts alleged in the SOR.

Applicant believes that he is more mature regarding his finances now, and that he has learned from the clearance process. He intends to establish payment plans to pay off his debts sometime in the future - when he has funds available to do so. He believes that with his current job he will have the financial means to pay his debts through payment plans, and that his financial situation would be stable.

### **Policies**

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AGs list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The

applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds . . .

Applicant’s financial problems are documented in the record. The delinquent debts alleged in the SOR are established by his admissions and the record evidence. AG ¶ 19 provides disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts,” and “(c) a history of not meeting financial obligations.” The record established these disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

I considered the seven financial considerations mitigating conditions under AG ¶ 20; however, only two are potentially applicable:

(b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation,

clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and,

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditor or otherwise resolve debts.

The Appeal Board concisely explained an applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2, ¶ 2(b). ISCR Case No. 10-04641 at 4 (App. Bd. Sep. 24, 2013).

The AG ¶ 20(b) financial considerations mitigating condition is not fully established by the facts in this case and does not mitigate the security concerns. Applicant's financial problems started in about 2011. All of the delinquent accounts alleged in the SOR are still ongoing and unresolved. Applicant's evidence is somewhat sufficient to establish that circumstances beyond his control contributed to his financial problems, i.e., his periods of unemployment, his divorce, and him having custody of three children and being the sole provider.

Notwithstanding, Applicant's evidence is insufficient to establish that he has been financially responsible under the circumstances. There is no evidence to show that he is following a budget or recently participated in financial counseling. Applicant submitted no documented evidence of good-faith efforts to resolve his debts before he submitted his 2018 SCA; after he was interviewed by a Government investigator in 2018; after he received the 2020 SOR; or before his September 2021 hearing. AG ¶ 20(d) is not applicable.

Considering the evidence as a whole, Applicant's evidence is insufficient to demonstrate his financial responsibility, that his financial problems are being resolved, or that he has the financial ability to pay his debts. The financial considerations security concerns are not mitigated.

### **Guideline E - Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes a condition that could raise a security concern and be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant information from any personal security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

When Applicant submitted his 2018 SCA, he knew he had accounts that were delinquent, in collection, charged off, or had a car repossessed. He failed to disclose those delinquent accounts in his 2018 SCA. He deliberately falsified his 2018 SCA to cover his financial problems. His lack of candor and dishonesty demonstrate questionable judgment, unreliability, and an unwillingness to comply with rules and regulations, establishing the above disqualifying condition.

AG ¶ 17 provides seven conditions that could mitigate security concerns raised under this guideline. Only two of those mitigating conditions are potentially applicable to the facts in this case:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and



(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After thorough consideration of the facts, the above mitigating conditions are not supported by the facts in this case and they are not applicable. Applicant's evidence is insufficient to fully establish any mitigating factors under AG ¶ 17.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. Security Executive Agent Directive (SEAD) 4, App. A, ¶¶ 2(a) and 2(d). I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment:

Applicant, 33, was unemployed between August 2013 and January 2014, and between January 2015 and May 2015. Except for these two periods of unemployment, he has been fully employed with different federal contractor since January 2014. His evidence is insufficient to establish a track record of financial responsibility. Moreover, he falsified his 2018 SCA in failing to disclose his financial problems, as required. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. Unmitigated personal conduct and financial considerations security concerns lead me to conclude that granting a security clearance to Applicant is not warranted.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.l:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

## **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for a security clearance. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge